

**Internal Revenue Service**

**Department of the Treasury**

Washington, DC 20224

**NO PROTEST RECEIVED**

Person to Contact: Release copies to District

Telephone Number:

Date 4/3/95

Refer Reply to:

Surname [REDACTED]

Date: FEB - 9 1995

DO: Baltimore

EIN: [REDACTED]

Dear Applicant:

This is in reply to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

You were formed to facilitate the adoptions of infants and children. You are the outgrowth of another section 501(c)(3) organization which was founded to provide an alternative to abortion. You were formed by that organization to fill the need for a local adoption agency licensed by the state, to do home studies and the other work necessary to facilitate adoptions. Services to the natural parents are provided at no cost to them. The financial information you have provided indicates that fees for services are to be your sole or dominant source of income. The fees you charge were determined by the usual customary charge for similar services provided in your area. The fees are fixed but about [REDACTED] percent of the adoptive families have received services for discounted fees. You advertise your program on the radio, in the yellow pages of the phone book and through brochures. Your primary expenses are the payment for contract labor, salaries and wages. You also engage in a certain amount of public educational programs concerning adoption.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of

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private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term charitable is used in its generally accepted legal sense. The term includes, among other activities, organizations established to assist in the advancement of education, promotion of health and the promotion of social welfare.

Section 1.501(c)(3)-1(d)(3) of the regulations defines the term "educational" as including the instruction or training of the individual for the purpose of improving or developing his capabilities.

In Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), Ct.D. 1650, C.B. 1945, 375, the Supreme Court of the United States held that the presence of a nonexempt purpose, if more than insubstantial, would destroy tax exempt status as a charitable organization.

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974), holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

In B.S.W. Group, Incorporated v Commissioner, 70 T.C. 352, the court held that an organization which operated at a profit whose only role is that of a conduit linking individual researchers with interested client organizations, both exempt and nonexempt, did not qualify for exemption under section 501(c)(3) of the Code. It was conducting a consulting business of the sort which is ordinarily carried on by commercial ventures organized for profit and not engaging in a recognized section 501(c)(3) exempt activity.

The submitted information establishes that you are basically engaging in three separate and distinct activities. You provide care and education to the natural mothers of children to be placed for adoption, assist adoptive parents in arranging for and qualifying for adoptions under state law, and engage in a limited amount of educational programs. Without, further investigation at this time, we are willing to recognize that providing medical services without cost to the natural mother and engaging in educational programs are probably charitable activities within the meaning of section 501(c)(3) of the Code. However, in order to qualify for recognition of exemption under section 501(c)(3) of the Code an organization must be engaged exclusively in charitable or educational endeavors. A single substantial

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activity in furtherance of a non-exempt purpose disqualifies an organization from exemption, despite the presence of other exempt purposes. See Better Business Bureau v. United States, *supra*. Therefore, the key inquiry the application pertains to whether providing adoption services for a fee that is equal to the usual customary charge for similar services in this area is a charitable activity within the meaning of section 501(c)(3) of the Code.

Operating in a manner similar to a for profit corporation is not an exempt charitable activity for the purposes of section 501(c)(3) of the Code. See B.S.W. Group, Incorporated v. Commissioner, *supra*. The information you have submitted establishes that your fee equals the usual customary fee for similar services. You advertise your program in a commercial manner and income for the services you provide is your sole or dominate source of income. Although there is no evidence of any profit earned, the expenses you indicate that you incur for contract labor salaries and wages is your major expense. It is also clear that this activity is more than an insubstantial one.

Accordingly, we have concluded that your activities with the adoptive parents are carried on in a manner similar to a for profit business and is not an exempt charitable activity for the purposes of section 501(c)(3) of the Code. Because this nonqualifying activity is a substantial activity, we have concluded that you do not qualify for recognition of exemption under section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principle officers, must be submitted within 30 days from the date of this letter. You also have the right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principle officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the U.S. Court of Federal Claims, or the District Court of the United States for the

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District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your Key District Director. Thereafter, any questions about your federal tax status should be addressed to that office. Also, the appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

(signed) [REDACTED]

[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch 5